

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:) CHAPTER 7
)
JAMES M. FISHER, JR.,) CASE NO. 07-60828
)
Debtor.) JUDGE RUSS KENDIG
)
) **MEMORANDUM OF OPINION**
) **(NOT INTENDED FOR**
) **PUBLICATION)**

This matter is before the court on Debtor's Application to Proceed *In Forma Pauperis* (hereafter "application") filed on March 26, 2007. On March 29, 2007, the court entered an order for Debtor to file additional documentation to allow the court to fully assess his current financial condition. Debtor filed additional documents on April 19, 2007.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and is premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether Debtor's income is 150 percent of the poverty level. According to the Department of Health and Human Services 2007 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/07poverty.shtml>, the poverty income for a family of one is \$10,210.00. At 150 percent of poverty, the poverty income is \$15,315.00 annually or \$1,276.25 per month.

Form B22A (the "means test") indicates Debtor's Annualized Current Monthly Income is \$2,700.00 which is based on a monthly gross income of \$225.00.¹ Schedule I indicates that Debtor's monthly income is \$997.00 per month. Clearly, these figures indicate that Debtor is below the 150% poverty threshold and therefore Debtor has satisfied the first prong of the test.

¹ This represents debtor's pension income. Debtor also receives a Social Security payment of \$772.00 per month which is excluded from the means-test calculation. Debtor provided documentation in support of both amounts.

Upon review of Debtor's Schedule J, the court concludes that Debtor is able to pay the filing fee in installments. Although the court notes that debtor's budget is modest, and includes no itemizations for common expenses, including a cell phone, car repairs or recreational expenses, the budget does show net income of \$254.00 per month. If this is applied to the filing fee, debtor will be able to pay the fee in two months. Therefore, Debtor has not demonstrated an inability to pay the filing fee in installments and therefore has not met the second prong of the analysis.

Upon review of the documents, the Court hereby **DENIES** Debtor's application to waive the filing fee. Debtor shall be permitted to pay the filing fee in installments of \$150.00 monthly until the fee is paid in full and may pay the amount in full anytime during the payment plan.² The first payment is due on May 15, 2007. If paying by mail, Debtor shall send a money order, payable to Clerk, United States Bankruptcy Court, to United States Bankruptcy Court, 201 Cleveland Ave., S.W., Canton, OH 44702. If paying in person, Debtor shall bring either the exact amount of cash or a money order, payable to Clerk, United States Bankruptcy Court, to the Clerk's Office. Failure to pay the filing fee in accordance with this order will result in dismissal of the case.

An order in accordance with this decision shall be issued immediately.

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

APR 23 2007

² The payment schedule is as follows:

May 15, 2007: \$150.00
June 15, 2007: \$149.00

Service List:

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